

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

BETHANY REED,

Plaintiff,

v.

KADLEC REGIONAL MEDICAL  
CENTER, PROVIDENCE HEALTH &  
SERVICES, PROVIDENCE ST.  
JOSEPH HEALTH,

Defendants.

No. 4:22-cv-5022-TOR

STIPULATED  
PROTECTIVE ORDER

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled

1 to confidential treatment under the applicable legal principles, and it does not  
2 presumptively entitle parties to file confidential information under seal.

3 2. “CONFIDENTIAL” MATERIAL

4 “Confidential” material shall include the following documents and tangible  
5 things produced or otherwise exchanged:

6 2.1 Plaintiff’s healthcare information and records.

7 3. SCOPE

8 The protections conferred by this agreement cover not only confidential  
9 material (as defined above), but also (1) any information copied or extracted from  
10 confidential material; (2) all copies, excerpts, summaries, or compilations of  
11 confidential material; and (3) any testimony, conversations, or presentations by  
12 parties or their counsel that might reveal confidential material.

13 However, the protections conferred by this agreement do not cover  
14 information that is in the public domain or becomes part of the public domain  
15 through trial or otherwise.

16 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

17 4.1 Basic Principles. A receiving party may use confidential material that  
18 is disclosed or produced by another party or by a non-party in connection with this  
19 case only for prosecuting, defending, or attempting to settle this litigation.  
20 Confidential material may be disclosed only to the categories of persons and under  
21 the conditions described in this agreement. Confidential material must be stored  
22 and maintained by a receiving party at a location and in a secure manner that  
23 ensures that access is limited to the persons authorized under this agreement.

1           4.2 Disclosure of “CONFIDENTIAL” Information or Items. Unless  
2 otherwise ordered by the court or permitted in writing by the designating party, a  
3 receiving party may disclose any confidential material only to:

4           (a) the receiving party’s counsel of record in this action, as well as  
5 employees of counsel to whom it is reasonably necessary to disclose the  
6 information for this litigation;

7           (b) the officers, directors, and employees (including in house  
8 counsel) of the receiving party to whom disclosure is reasonably necessary for this  
9 litigation, unless the parties agree that a particular document or material produced  
10 is for Attorney’s Eyes Only and is so designated;

11           (c) experts and consultants to whom disclosure is reasonably  
12 necessary for this litigation and who have signed the “Acknowledgment and  
13 Agreement to Be Bound” (Exhibit A);

14           (d) the court, court personnel, and court reporters and their staff;

15           (e) copy or imaging services retained by counsel to assist in the  
16 duplication of confidential material, provided that counsel for the party retaining  
17 the copy or imaging service instructs the service not to disclose any confidential  
18 material to third parties and to immediately return all originals and copies of any  
19 confidential material;

20           (f) during their depositions, witnesses in the action to whom  
21 disclosure is reasonably necessary and who have signed the “Acknowledgment and  
22 Agreement to Be Bound” (Exhibit A), unless otherwise agreed by the designating  
23 party or ordered by the court. Pages of transcribed deposition testimony or exhibits

1 to depositions that reveal confidential material must be separately bound by the  
2 court reporter and may not be disclosed to anyone except as permitted under this  
3 agreement;

4 (g) the author or recipient of a document containing the  
5 information or a custodian or other person who otherwise possessed or knew the  
6 information.

7 4.3 Filing Confidential Material. Before filing confidential material or  
8 discussing or referencing such material in court filings, the filing party shall confer  
9 with the designating party, in accordance with Local Civil Rule 5(g)(3)(A), to  
10 determine whether the designating party will remove the confidential designation,  
11 whether the document can be redacted, or whether a motion to seal or stipulation  
12 and proposed order is warranted. During the meet and confer process, the  
13 designating party must identify the basis for sealing the specific confidential  
14 information at issue, and the filing party shall include this basis in its motion to  
15 seal, along with any objection to sealing the information at issue. Local Civil Rule  
16 5(g) sets forth the procedures that must be followed and the standards that will be  
17 applied when a party seeks permission from the court to file material under seal. A  
18 party who seeks to maintain the confidentiality of its information must satisfy the  
19 requirements of Local Civil Rule 5(g)(3)(B), even if it is not the party filing the  
20 motion to seal. Failure to satisfy this requirement will result in the motion to seal  
21 being denied, in accordance with the strong presumption of public access to the  
22 Court's files.  
23

1     5.     DESIGNATING PROTECTED MATERIAL

2             5.1     Exercise of Restraint and Care in Designating Material for Protection.

3     Each party or non-party that designates information or items for protection under  
4     this agreement must take care to limit any such designation to specific material that  
5     qualifies under the appropriate standards. The designating party must designate for  
6     protection only those parts of material, documents, items, or oral or written  
7     communications that qualify, so that other portions of the material, documents,  
8     items, or communications for which protection is not warranted are not swept  
9     unjustifiably within the ambit of this agreement.

10            Mass, indiscriminate, or routinized designations are prohibited. Designations  
11     that are shown to be clearly unjustified or that have been made for an improper  
12     purpose (*e.g.*, to unnecessarily encumber or delay the case development process or  
13     to impose unnecessary expenses and burdens on other parties) expose the  
14     designating party to sanctions.

15            If it comes to a designating party's attention that information or items that it  
16     designated for protection do not qualify for protection, the designating party must  
17     promptly notify all other parties that it is withdrawing the mistaken designation.

18            5.2     Manner and Timing of Designations. Except as otherwise provided in  
19     this agreement (see, *e.g.*, second paragraph of section 5.2(b) below), or as  
20     otherwise stipulated or ordered, disclosure or discovery material that qualifies for  
21     protection under this agreement must be clearly so designated before or when the  
22     material is disclosed or produced.

1 (a) Information in documentary form: (e.g., paper or electronic  
2 documents and deposition exhibits, but excluding transcripts of depositions or  
3 other pretrial or trial proceedings), the designating party must affix the word  
4 “CONFIDENTIAL” to each page that contains confidential material. If only a  
5 portion or portions of the material on a page qualifies for protection, the producing  
6 party also must clearly identify the protected portion(s) (e.g., by making  
7 appropriate markings in the margins).

8 (b) Testimony given in deposition or in other pretrial proceedings:  
9 the parties and any participating non-parties must identify on the record, during the  
10 deposition or other pretrial proceeding, all protected testimony, without prejudice  
11 to their right to so designate other testimony after reviewing the transcript. Any  
12 party or non-party may, within fifteen days after receiving the transcript of the  
13 deposition or other pretrial proceeding, designate portions of the transcript, or  
14 exhibits thereto, as confidential. If a party or non-party desires to protect  
15 confidential information at trial, the issue should be addressed during the pre-trial  
16 conference.

17 (c) Other tangible items: the producing party must affix in a  
18 prominent place on the exterior of the container or containers in which the  
19 information or item is stored the word “CONFIDENTIAL.” If only a portion or  
20 portions of the information or item warrant protection, the producing party, to the  
21 extent practicable, shall identify the protected portion(s).

22 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent  
23 failure to designate qualified information or items does not, standing alone, waive

1 the designating party's right to secure protection under this agreement for such  
2 material. Upon timely correction of a designation, the receiving party must make  
3 reasonable efforts to ensure that the material is treated in accordance with the  
4 provisions of this agreement.

5 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6 6.1 Timing of Challenges. Any party or non-party may challenge a  
7 designation of confidentiality at any time. Unless a prompt challenge to a  
8 designating party's confidentiality designation is necessary to avoid foreseeable,  
9 substantial unfairness, unnecessary economic burdens, or a significant disruption  
10 or delay of the litigation, a party does not waive its right to challenge a  
11 confidentiality designation by electing not to mount a challenge promptly after the  
12 original designation is disclosed.

13 6.2 Meet and Confer. The parties must make every attempt to resolve any  
14 dispute regarding confidential designations without court involvement. Any motion  
15 regarding confidential designations or for a protective order must include a  
16 certification, in the motion or in a declaration or affidavit, that the movant has  
17 engaged in a good faith meet and confer conference with other affected parties in  
18 an effort to resolve the dispute without court action. The certification must list the  
19 date, manner, and participants to the conference. A good faith effort to confer  
20 requires a face-to-face meeting or a telephone conference.

21 6.3 Judicial Intervention. If the parties cannot resolve a challenge without  
22 court intervention, the designating party may file and serve a motion to retain  
23 confidentiality under Local Civil Rule 7 (and in compliance with Local Civil Rule

1 5(g), if applicable). The burden of persuasion in any such motion shall be on the  
2 designating party. Frivolous challenges, and those made for an improper purpose  
3 (e.g., to harass or impose unnecessary expenses and burdens on other parties) may  
4 expose the challenging party to sanctions. All parties shall continue to maintain the  
5 material in question as confidential until the court rules on the challenge.

6 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED  
7 IN OTHER LITIGATION

8 If a party is served with a subpoena or a court order issued in other litigation  
9 that compels disclosure of any information or items designated in this action as  
10 “CONFIDENTIAL,” that party must:

11 (a) promptly notify the designating party in writing and include a  
12 copy of the subpoena or court order;

13 (b) promptly notify in writing the party who caused the subpoena  
14 or order to issue in the other litigation that some or all of the material covered by  
15 the subpoena or order is subject to this agreement. Such notification shall include a  
16 copy of this agreement; and

17 (c) cooperate with respect to all reasonable procedures sought to be  
18 pursued by the designating party whose confidential material may be affected.

19 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

20 If a receiving party learns that, by inadvertence or otherwise, it has disclosed  
21 confidential material to any person or in any circumstance not authorized under  
22 this agreement, the receiving party must immediately (a) notify in writing the  
23 designating party of the unauthorized disclosures, (b) use its best efforts to retrieve



1 all unauthorized copies of the protected material, (c) inform the person or persons  
2 to whom unauthorized disclosures were made of all the terms of this agreement,  
3 and (d) request that such person or persons execute the “Acknowledgment and  
4 Agreement to Be Bound” that is attached hereto as Exhibit A.

5 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE  
6 PROTECTED MATERIAL

7 When a producing party gives notice to receiving parties that certain  
8 inadvertently produced material is subject to a claim of privilege or other  
9 protection, the obligations of the receiving parties are those set forth in Federal  
10 Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify  
11 whatever procedure may be established in an e-discovery order or agreement that  
12 provides for production without prior privilege review. The parties agree to the  
13 entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

14 10. NON TERMINATION AND RETURN OF DOCUMENTS

15 Within 60 days after the termination of this action, including all appeals,  
16 each receiving party must return all confidential material to the producing party,  
17 including all copies, extracts and summaries thereof. Alternatively, the parties may  
18 agree upon appropriate methods of destruction.

19 Notwithstanding this provision, counsel are entitled to retain one archival  
20 copy of all documents filed with the court, trial, deposition, and hearing transcripts,  
21 correspondence, deposition and trial exhibits, expert reports, attorney work  
22 product, and consultant and expert work product, even if such materials contain  
23 confidential material. And counsel for each party may retain a copy of confidential

1 material obtained through litigation for the sole purpose of abiding by its  
2 malpractice insurance policies to the extent they require the retention of case files  
3 for a specified time.

4 The confidentiality obligations imposed by this agreement shall remain in  
5 effect until a designating party agrees otherwise in writing or a court orders  
6 otherwise.

7  
8 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

9 DATED: 05/12/2022

10 MacDONALD HOAGUE & BAYLESS

11  
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1 DATED: 05/12/2022

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17 Attorneys for Defendants

1 PURSUANT TO STIPULATION, IT IS SO ORDERED

2 IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the  
3 production of any documents in this proceeding shall not, for the purposes of this  
4 proceeding or any other federal or state proceeding, constitute a waiver by the  
5 producing party of any privilege applicable to those documents, including the  
6 attorney-client privilege, attorney work-product protection, or any other privilege  
7 or protection recognized by law.

8 DATED May 15, 2022.



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THOMAS O. RICE  
United States District Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, \_\_\_\_\_ [print or type full name], of  
\_\_\_\_\_ [print or type full address], declare  
under penalty of perjury that I have read in its entirety and understand the  
Stipulated Protective Order that was issued by the United States District Court for  
the Eastern District of Washington on [date] in the case of *Bethany Reed v. Kadlec*  
*et. al.*, Case No. 4:22-cv-5022-TOR. I agree to comply with and to be bound by all  
the terms of this Stipulated Protective Order and I understand and acknowledge  
that failure to so comply could expose me to sanctions and punishment in the  
nature of contempt. I solemnly promise that I will not disclose in any manner any  
information or item that is subject to this Stipulated Protective Order to any person  
or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District  
Court for the Western District of Washington for the purpose of enforcing the  
terms of this Stipulated Protective Order, even if such enforcement proceedings  
occur after termination of this action.

Date: \_\_\_\_\_

City and State where sworn and signed: \_\_\_\_\_

Printed name: \_\_\_\_\_

Signature: \_\_\_\_\_